

The background features a large, faint, light-green watermark of the United States Environmental Protection Agency (EPA) seal. The seal is circular, with the words "UNITED STATES" at the top and "ENVIRONMENTAL PROTECTION AGENCY" at the bottom. In the center is a stylized flower or leaf design with three petals and a central stem.

# **Superfund Overview**

John Burchette

EPA Remedial Project Manager



# What is Superfund?

- Environmental program established to address hazardous waste sites.
- Fund established under CERCLA of 1980
- CERCLA was enacted in response to the discovery of a handful of toxic waste dumps in the 1970's
  - E.g. Love Canal, Valley of the Drums, Times Beach



# How Superfund Works

- A program specifically designed to identify/assess/cleanup sites where a release(s) of hazardous substance have occurred
- Superfund cleanup process
  - PA/SI-Investigate Site conditions
  - NPL Listing-HRS package. Sites scored.
  - RI/FS-Defines the nature and extent of contamination
  - ROD-Explains which cleanup alternatives will be used at NPL Sites
  - RD/RA-Plans and Specs for applying the site remedies
  - Construction Completion-Completion of physical cleanup
  - NPL Delete-Removes a site from the NPL once all RAs are complete and cleanup goals have been achieved
  - Reuse-Returning sites to safe and productive use without adversely affecting the remedy



# CERCLA Specifics

- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
  - 42 U.S.C. §§ 9601-9675
  - 40 C.F.R. Part 300
- Empowered federal government to address sites contaminated by hazardous substances
- Empowered states and third parties to act
- Empowered federal government, states and third parties to seek costs of remediation from responsible parties
- Firmly allocated liability for contamination (with several key exceptions)



# Key Statutory Provisions and Highlights

- CERCLA
  - The critical statutory provision is CERCLA 107(a)(4)(B), 42 U.S.C. sec. 9607(a)(4)(B).
    - The section provides: “[any responsible party (PRP) associated with a 'facility'] from which there is a **release**, or a **threatened release** which causes the incurrence of response costs, of a **hazardous substance**, shall be liable for . . . [any] necessary costs of response incurred by any other person consistent with the National Contingency plan.”
    - This provision has been interpreted to create a private right of action for recovery of response costs.
    - Plaintiff may itself be a PRP statutorily liable for governmental or private party response costs.
    - But plaintiff is not required to be a PRP to maintain private cost recovery action.



# Key Statutory Provisions and Highlights cont.

- Elements of a claim under section 107(a)(4)(B).
  - There is or has been a “release” or “threatened release” of a hazardous substance.
    - Broad definition of “release” in CERCLA § 101(22): “spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant).”
    - “Release” construed broadly to include mere presence of hazardous substances in soil and groundwater.
    - “Threatened release” likewise broadly construed. E.g., barrels containing hazardous substances with minor leaks; and presence of PCBs in concrete flooring.
    - A plaintiff need not demonstrate that emissions violate a quantitative threshold to establish the “release” of a hazardous substance within the meaning of CERCLA. However, a party must demonstrate that a release violates or threatens to violate some state or federal standard in order to justify and recover incurred response costs.



# Key Statutory Provisions and Highlights cont.

- Hazardous substances have been “disposed of”:
  - CERCLA sec. 101(29) defines “disposal” similarly to release.
  - “Disposed of” has been broadly interpreted. E.g., indoor spilling of PCBs deemed disposal; and lead dust settling inside warehouse deemed disposal.
  - Disposal has been found to occur when hazardous materials are moved or released during landfill excavations.
- Other definitions
  - Hazardous Substance, Facility, Liable Parties and other matters
- Specifically defined exemptions
  - Petroleum
  - Normal Application of Pesticide
  - Engine exhaust etc...